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Governor's Blue Ribbon Water Task Force

Meeting Notes December 21, 2005 Albuquerque, NM

Attendees: Conci Bokum, Brian Burnett, Wayne Cunningham, Kyle Harwood Lisa Henne, Steve Hernandez, Dave Hughes, Bill Hume, Sarah Kotchian, Estevan Lopez, Elmer Salazar, and Jack Westman attended the meeting. Stephanie Moore and John Burkstaller from Daniel B. Stephens & Associates attended as guest presenters.

Updates from the Regions

- The Rio Grande snowpack is 30% of normal, and even lower in the Jemez area. Predictions are for a dryer than normal year.
- Kyle Harwood reported that Santa Fe canyon reservoirs are at 56%.
- Steve Hernandez reported that a large amount of undelivered allotment is being released to the state line. This will add 15,000 acre-feet of credit to the 17,200 acre-feet credit.
- John D'Antonio reported that the basin-specific regulations for the lower Pecos basin are almost completed. Mutual domestics and other water purveyors would be limited to 0.35 acre-feet per year in the event of a priority call. Estevan Lopez added that updates from the public hearings for the Lower Pecos regulations have been completed and are now in internal review.

John also reported that the Lower Rio Grande basin-specific regulations are nearly finished. The EBID wants different farm delivery requirements for row crops and pecans. To get the best possible document, the OSE will give the lower Rio Grande Water Users Association an opportunity to review and comment on the draft regulations before making them available to the public.

Elmer Salazar asked John whether the limiting requirement would alleviate the fact that mutual domestics are extracting more than they are entitled to, and whether there would be a penalty system for exceeding the 0.25 or 0.35 limit. John responded that most of the basin-specific rules are related to priority call, and that mutual domestics would go to indoor use only. John added that there is a real need to address issues with mutual domestics. In the past, the OSE has allowed mutual domestics to use 60 gals/capita/day. In the future, the OSE wants to require a transfer of valid water rights as a condition of allowing mutual domestics to grow. The problem is that it does not make sense to control mutual domestics if the OSE

cannot control domestic wells. The OSE will allow some leasing of water rights on a short-term basis to help mutual domestics to get into balance, but will not allow leasing for permanent development.

Bill Hume commented that through evolution of law, control of mutual domestics has fallen to the NMED and the Department of Health, and mutual domestics can be required to show financial plans.

John stated that the Water Infrastructure Investment Team is looking at ways to run rural water projects with a systems perspective, which would include aspects such as rates, asset management, leakage, etc. The Water Trust Board is interested in trying to fund projects that make sense on a regional basis to make better use of funding. Bill responded that there is no functioning system for rural water associations that need to do some type of project. Due to lack of coordination among funding entities, the systems get too little or too much funding for their project. The new one-stop application process should improve the situation by allowing all of the state and federal entities to coordinate on who will fund what.

Sarah Kotchian asked whether it might be useful for the state to take an approach aimed at improving the governance capacity for small water systems. John replied that there is a technical team of people who are working on this, and that the OSE has added this to the base expansion request for FTEs. The framework is there, but now it is a matter of funding and setting up structures. Sarah responded that the effort that John referred to is related to projects, and asked what is being done about volunteer governance training in the management of small water systems. Estevan stated that the NM Rural Water Association offers training, but nobody is required to take it. Brian Burnett suggested that the Task Force schedule a presentation on this topic to get a better grounding. John D'Antonio agreed that he and OSE staff could do a presentation. Jack Westman suggested inviting Jim Dunlap to that presentation; as former president of the National Rural Water Users Association, Jim might be able to offer insight from what other areas are doing.

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Steve Hernandez commented that he has represented numerous mutual domestics over the years. He described mutual domestics as varying from sophisticated to tiny, but essentially being very political organizations. Steve added that mutual domestics often start with a developer setting up shared wells, which then evolve into a mutual domestic. Boards change frequently and it is difficult to get people to vote in an election or be otherwise involved unless there's a problem. The state has no choice but to help when people don't have water.

- Jack Westman asked John D'Antonio for an update on what he expects for domestic well legislation this session. John replied that he will be working administratively rather than through the legislative process, and will put out a rule set and hold public meetings throughout the state during January and February. The regulations would establish domestic well management areas, and would also make it so OSE could uphold more restrictive regulations set by counties or other entities.

Jack responded that we still lack a statewide perspective on domestic wells, and somehow need to make it clear that it is a serious issue. Bill Hume noted that it is really not a statewide problem, as some areas are worse off than others. However, the protection of existing water

rights for both wells and surface water is a big issue. Dave Hughes commented that for counties, every new development creates revenue, and county commissioners are going to lean in favor of economic development. John stated that the OSE has no interest in being punitive, and will look at the context for each situation and try to be consistent. It will be important to phase in the rules and regulations. It will also be important to emphasize that it is not an OSE power grab, but rather will be based on liability to the state and the best available science.

Jack asked what the pueblos think of the proposed rules and regulations. Bill Hume responded that the middle Rio Grande pueblos are in favor of the proposal. Larry Blair asked whether there is any effort to tie this regulation to septic systems, as domestic wells are usually associated with septic systems.

The Task Force agreed to keep this topic as a regular agenda item, including updates on the regulations and the public involvement/communication plan.

- Howard Hutchinson reported that the political subdivisions in the southwestern part of the state are working to finalize the Joint Powers Agreement (JPA) [to contract with the Secretary of Interior for water made available through the Colorado River Basin Project Act]. The JPA is now being circulated for signatures, and will then go to Department of Finance and Administration for review. In response to John D'Antonio's comment, a clause was added to the JPA which gives the [Gila-San Francisco Water] Commission regional water planning powers.

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Howard added that in addition to the JPA, there is a Memorandum of Understanding (MOU) on an initial study to look at threatened and endangered (T&E) species issues. The planning group met decided that they would use the US Department of Fish and Wildlife (F&W) draft and look only at parameters related to potential impacts on T&E species. The study will first use conjunctive use and forbearance agreement as a screen to evaluate impacts to T&E species. The next step will be to use a finer and broader screen and do a programmatic Environmental Impact Statement, at which point F&W will have to recuse itself because of a conflict of interest. The programmatic EIS will only look at the withdrawal of the water and its impact on the environment, and will evaluate a series of alternatives (locations and times of withdrawal).

The planning group also discussed the Arizona Water Settlement Act with respect to how much money New Mexico can receive, and whether those funds will be required to be paid back or will be allowed to be utilized for something other than a project. The Consumptive Use and Forbearance Agreement (CUFA) entitled the state of NM to do other types of work, but the Act stipulates that the funds are for water projects.

Howard also reported that the ad hoc committee for regional planning has reconvened, and has set up a collaborative modeling group to model flow on the San Francisco, Gila and Mimbres rivers. The group has developed initial modeling parameters, and is now beginning to input data to produce a document similar to what was done for the middle Rio Grande. The group is trying to incorporate everyone's concerns into the model, which will provide the opportunity to evaluate different scenarios and serve as a tool for understanding how to

allocate water.

Steve Hernandez asked if there has been an up-front agreement on a flow regime, and pointed out that the CUFA includes minimum flow requirements. Bill Hume responded that the ISC will have ultimate control over the flow regime. Larry Blair stated that he thought New Mexico had 18,000 acre-feet of water from the settlement. Howard responded that there is still a potential to get 18,000 acre-feet, but the CUFA stipulates that 14,000 acre-feet is to be released out of NM. If there are means to augment the flows, the 18,000 acre-feet amount is still a possibility, but it is hydrologically questionable. Howard added that the regional water plan looked at how water can be stored and released in a properly functioning watershed, and the possibility of increasing flow through watershed management and moderation of flow. Water arrives in Gila from October through April, when nobody needs it. If the flow could be moderated, the water could be put to beneficial use. Howard concluded by saying that this Gila model has potential to provide a model for the state and the west, as it is a microcosm of all of the conflicts and issues that are inherent throughout the west.

Jack Westman commented that this situation touches on the broader issue of watershed management, which the Blue Ribbon Task Force had worked very hard on in the past. Given the potentially severe fire season that we are facing, it would be a good time to return to watershed management as a focus of the Task Force.

- John D'Antonio reported that he and Estevan attended the Colorado River Users meeting in Las Vegas. Colorado River users include seven states (Wyoming, Colorado, Utah, New Mexico, Nevada, California, and Arizona) and Mexico. Both the upper and lower Colorado basins have numerous issues that need to be managed. For example, reservoir levels are low, and users are looking at how to manage reservoirs to better handle shortages. The upper basin has not used its full apportionment, while the lower basin has over-used its apportionment. There are also tributary development issues. For example, much of the growth in Arizona is dependent on Central Arizona Project water, which is junior to uses in California. Nevada is trying to develop other sources of water, such as the Virgin River project. Arizona, Colorado, and Wyoming want to preserve future development opportunities, while New Mexico is in a better situation because it is using its apportionment.

Estevan added that Nevada is at its compact apportionment limit and needs to supply water for a growing population. This poses real threats to the upper basin. The Secretary of the Interior is pressing the issue and requiring the lower basin plan for shortage. She wants to put out a scoping statement for an EIS in February.

Bill Hume commented that Lake Mead and Lake Powell need to be managed together so that reservoir levels can be maintained for power generation and provision of water to Las Vegas, rather than having one reservoir too low and the other higher than it needs to be. The rules for the Colorado River were made when water levels were much higher than normal, and are not working well now.

- Estevan updated the task force on the ISC position requiring a master plan for development around Ute reservoir. He reported that the issue has not gone away, and commissioners

continue to look at all aspects and perspectives. To that end, they have held off on any formal resolution, but will set up an information gathering meeting in the Clovis area. The meeting is scheduled for January 18th.

Update on the Navajo settlement

John D'Antonio reported that he has been trying to get an interview with Joe Garcia for the video, but has been having problems connecting with him. The OSE will probably have to finish the video without the interview in the interests of staying on schedule. The video will go to final cut soon and Hirst Córdova is developing a production cut for OSE/ISC to review. The next steps have not been completely fleshed out, but OSE is thinking about the option of expanding the video to a 30-minute production for KNME. Any new efforts should try to mesh with the Anderson School study.

John mentioned that he and Estevan attended a meeting at the Economic Forum with Jack Westman. The meeting included presentations on the Navajo settlement from John D'Antonio, Estevan Lincoln, John Leeper, and an economist from the UNM Anderson School. The economist presented information from the economic study, and presented estimated multiplier effects of 1.26 (San Juan and McKinley counties) and 1.59 (state), and a creation of 700 jobs for the construction phase. The multiplier would be higher for scales larger than the state level.

Estevan commented that a hydrologic determination in upper basin states is still needed to evaluate whether there is enough water in the basin to support the settlement.

Jack Westman reported that John Leeper was very effective as a presenter, and successfully portrayed the level of uncertainty for Santa Fe and Albuquerque if the Navajo Nation decided to try to get their water from Navajo Lake. Heather Wilson now wants more information about the settlement. Estevan added that John Leeper also spoke about the tour. John D'Antonio mentioned that Jack brought up the importance of the settlement to Santa Fe and Albuquerque, and the importance for those entities to be involved with communicating the message.

Larry Blair stated that it was his understanding that the Navajo Indian Irrigation Project (NIIP) was to quiet any further any Navajo claims on San Juan water, and that was the reason that ABQ supported it. John D'Antonio explained that there are differing opinions on the issue, and it has been argued as to whether that was the true intent. The Navajo claim that the tribe would have additional Winters rights, in addition to the NIIP water. NIIP at full build-out was to irrigate 110,000 acres, and is now at about 80,000 acres. The current package would include full build-out and the settlement. NIIP completion was taken out of the final package because it was too expensive, and the Navajo Nation will continue to pursue funding separately. Estevan added that there was to have been funding within a certain time frame to complete NIIP, but the funding has not been there.

Estevan went on to say that the overall additional depletions out of the New Mexico apportionment are not that much, and the current effort is to make sure that the depletions will be taken from the apportionment and not from other users. There are also a lot of other aspects of the settlement that are good for New Mexico and improve the situation for everyone. For example, the Navajo Nation has agreed to protections for users in the San Juan basin, and for San

Juan Chama and Animas-La Plata contractors. As for the economic impacts of the project, the multipliers might seem low, but they apply only to the construction phase. The OSE/ISC is now finding money to start with next layer of economic study.

Elmer Salazar asked whether the settlement is integrated with other states – i.e., do the numbers crunch? Estevan replied that the hydrologic determination would show whether there is sufficient water. John added that he has been working with other upper basin states on issues of determination, and has acceptance from the Bureau of Reclamation and Department of Interior. The Secretary of Interior will defer to upper basin states.

Larry Blair asked whether water allocated to the pipeline project is subject to the shortage sharing provision. Estevan replied that senior Navajo agricultural claims will subordinate to other uses. Estevan also commented that the basin has a history of shortage-sharing agreements. Brian Burnett noted that both Albuquerque and Santa Fe have had issues with the shortage sharing aspects of the settlement, and asked whether there is anything that the task force can do to help with the issue. John responded that it is important to get support from Heather Wilson.

Kyle Harwood stated that the City of Santa Fe had worked on the shortage-sharing issue with John Utton and OSE/ISC staff, and had decided that the city's concerns had been addressed. The city has since taken a neutral stance on the settlement. For Santa Fe to take a position of support would require a new effort. Given the current level of uncertainty on San Juan Chama, it will be important for the City to understand how the settlement impacts San Juan Chama water.

Bill Hume stated that having agreement within the state on the settlement is important for getting federal support. If Albuquerque does not support the settlement, it could compromise federal support.

Brian Burnett commented that John Stomp said recently that the City of Albuquerque has some concerns but is neutral toward the settlement. Brian added that he was not sure if the mayor has been asked to support it. John D'Antonio said that he would meet with John Stomp to discuss the settlement.

Elmer Salazar asked if the Jicarilla are involved in the settlement. Estevan replied that the Jicarilla are supportive because they would have a way to access water that they got under their settlement. They were also present at the tour.

Summary of OSE/ISC Legislative priorities

John D'Antonio reported that the OSE submitted a list of requests for legislative priorities to the Governor's office. The requests are:

1. Funding of the Indian Water Rights Settlement Fund \$75M (\$35M for Navajo Nation, \$20M each for Aamodt and Taos).
2. Strategic Water Reserve Act (\$5M/year for 5 years).
3. Funding of water masters – 6-7 additional positions at a total of \$1M. If not funded, the next approach will be to have users pay fees to cover water master positions.

4. Amendments to 72-2-18 [NMSA 1978]. 72-2-18 was enacted in 2001 and authorized the state engineer to issue compliance orders, impose penalties for violations, etc. The existing legislation allowed people to go directly to district court (e.g., in the case of compliance orders) before exhausting remedies with OSE. The proposed amendments would make it consistent with water court and require that people exhaust their remedies with the OSE before going to the district court.
5. Gila Settlement Planning Act (\$210,000/year for 4 years).
6. Pecos Settlement Land and Water Act (\$18M this year, then \$10M/year for the next 3 years).
7. Allow Ute dam construction fund to be used for master plan (\$370,000 over 4 years).
8. Produced water tax credit – OSE would allow the Oil Conservation Division to retain jurisdiction over cooling water that is used in a closed loop system.
9. Water Trust Fund capitalization. At an interest rate of 4.8%, the fund could generate enough interest for bonding to provide \$50M/year for projects.

John also commented that the OSE/ISC has been spending down trust funds, and the Legislative Finance Committee has told the agency to start cutting back. However, agency funding cuts could cause serious problems. HB 1110 sets aside 10% of water project fund for adjudication, and will help offset trust fund expenditures. Estevan added that it is very difficult to cut back on trust fund use because the agency has been expanding, and the workload has grown over time.

Planning for the coming year:

Task force members discussed topics to consider for the coming year. The January meeting will be on the 25th and 26th in Santa Fe at a location to be announced later.

Proposed Agenda Items for January:

1. State Water Plan – progress reports with state water plan, next steps in water plan in general
2. Charlie Nylander – new video on acequia culture
3. Legislative session update
4. Update on Navajo Settlement
5. Update on Water Innovation Project Fund task
6. Update on mutual domestics and domestic wells rules and regulations
7. Focus areas and strategic planning for task force for 2006 (see list of topics of interest below)

Future Meetings

Watershed management – have presentations from agency reps, etc. Howard Hutchinson and Lisa Henne will work together to coordinate presentations. Conci Bokum has information on some studies. (February or March).

Visit to Middle Rio Grande Conservancy District (May).

Other Topics of Interest

As part of the work planning discussion and at different points during the meeting, members identified numerous topics that the task force could pursue in the coming year:

- Mutual domestics
- Environmental issues: surface water, surface water regulations, state versus federal role
- State water issues (in a broader sense)
- Water conservation and the role of state universities
- Treaty of Guadeloupe Hidalgo
- Water rights
- Environmental Justice
- Water Innovation Project Fund
- Review of New Mexico First report
- Role of watershed groups and characteristics of successful groups
- Watershed management
- Mutual domestics and domestic wells rules and regulations – how can the task force engage on this issue?

Conci Bokum suggested that in the future, presentations should include time for task force discussion of the topic.